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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

DEL SOLE, JOSEPH S

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 09/03/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/802,646

Examiner

Joseph S. Del Sole

Applicant(s)

ALLEN, MARTIN A.

Art Unit

1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-9 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

Attachments:

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3, 6, 7
- 4) ☐ Interview Summary (PTO-413) (Paper Notice)
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-5, drawn to an apparatus for making multi-component filaments, classified in class 425, subclass 72.2.
 - II. Claims 6-9, drawn to a process of making multi-component filaments, classified in class 264, subclass 510.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the process as claimed can be practiced by another and materially different apparatus such as an apparatus including extruders (for melting and conveying the liquid materials).
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. Kevin G. Rooney (by Examiner Tentoni, GAU 1732) on August 5, 2003 a provisional election was made without

from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Information Disclosure Statement

5. The information disclosure statements filed 7/5/01, 7/22/02 and 9/6/02 comply with the provisions of 37 CFR 1.97, 1.98 and MPEP 609. They have been placed in the application file and the information referred to therein has been considered as to its merits.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1 and 4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 5 of U.S. Patent No. 6,565,344. Although the conflicting claims are not identical, they are not patentably distinct from each other because 6,565,344 teaches an apparatus for extruding having a

_____ referred to

configured to communicate with a supply of the second type of liquid material (claim 1, lines 5-23); a plurality of first liquid outlets each for extruding a corresponding plurality of first strands (claim 5); a plurality of second liquid outlets each for extruding a corresponding plurality of second strands, each second outlet positioned adjacent to a corresponding one of the first liquid outlets (claim 5); a plurality of first liquid passages, each communicating between said first liquid input and a selected one of the first liquid outlets (claim 5); a plurality of second liquid passages, each communicating between the second liquid input and a selected one of the second liquid outlets (claim 5), the first and second liquid passages respectively converging at the first and second liquid outlets (claim 1, lines 19-23, if the liquids are going to form a multifilament they must converge and claim 5); a transfer block including first and second liquid inputs and portions of the first and second liquid passages (claim 1, the portion of the apparatus that must exist to initially receive the inputs is a transfer block, even if the transfer block is the same structure as the die top block); a die tip block including first and second outlets and other portions of the first and second liquid passages (claim 1).

6,565,344 fails to explicitly teach the first and second strands combining together immediately after extrusion to form the plurality of multi-component filaments having a cross-sectional configuration combining the first and second types of liquid material.

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention that the apparatus as claimed in claims 1 and 5 of 6,565,344 is

because claim 1 of 6,565,344 teaches the first and second passages having "first and second sets of discharge outlets" (claim 1, lines 21-23) wherein, dependent on the process utilized, different liquids from different outlets may be made to come together.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 3 and 4 rejected under 35 U.S.C. 102(b) as being anticipated by Yu (WO 99/48668).

Yu teaches an apparatus for extruding having a die tip (Fig 3, #20 and Fig 16, #118 and #120) including a first liquid input configured to communicate with a supply of the first type of liquid material and a second liquid input configured to communicate with a supply of the second type of liquid material (Fig 16, #118 and #120); a plurality of first liquid outlets each for extruding a corresponding plurality of first strands (Fig 4, connected to #s 34-39); a plurality of second liquid outlets each for extruding a corresponding plurality of second strands, each second outlet positioned adjacent to a corresponding one of the first liquid outlets (Fig 4, connected to #s 46-51); a plurality of first liquid passages, each communicating between said first liquid input and a selected one of the first liquid outlets (Fig 3); a plurality of second liquid passages, each

outlets of the first and second liquid passages respectively, converging at the first

and second liquid outlets for respectively extruding the pluralities of first and second strands (Fig 3); the first and second outlets respectively tangentially meet at an external surface of the die tip (Fig 3); a transfer block including first and second liquid inputs and portions of the first and second liquid passages (Fig 16, #118); and a die tip block (Fig 16, #120) including first and second outlets and other portions of the first and second liquid passages (Fig 3).

As discussed above, as claimed "the first and second strands combining together immediately after extrusion to form the plurality of multi-component filaments having a cross-sectional configuration combining the first and second types of liquid material" is a process limitation, however Yu shows that this is the process carried out by his invention (Figures 6-9) and shows that the multi-component products can be multiple filaments (Fig 16).

10. Claims 1-5 rejected under 35 U.S.C. 102(b) as being anticipated by Page (3,981,650).

Page teaches an apparatus for extruding having a die tip (Fig 1, #10) including a first liquid input configured to communicate with a supply of the first type of liquid material and a second liquid input configured to communicate with a supply of the second type of liquid material (Fig 1); a plurality of first liquid outlets each for extruding a corresponding plurality of first strands (Fig 5); a plurality of second liquid outlets each for extruding a corresponding plurality of second strands, each second outlet positioned

first liquid outlets (Fig 1); a plurality of second liquid passages, each communicating between the second liquid input and a selected one of the second liquid outlets (Fig 1), the first and second liquid passages respectively converging at the first and second liquid outlets for respectively extruding the pluralities of first and second strands (Fig 1); a manifold assembly (Fig 1, #s 16-21) including a first manifold liquid passage (Fig 1, #s 16, 18 and 19) communicating between the supply of the first type of liquid material and the first liquid input of the die tip (Fig 1) and including a second manifold liquid passage (Fig 1, #s 17, 20 and 21) communicating between the supply of the second type of liquid material and the second liquid input of the die tip, the manifold assembly further including a first heating device positioned proximate the first manifold liquid passage for maintaining the supply of the first liquid material at a first predetermined temperature (col 2, lines 39-43) and including a second heating device positioned proximately to the second manifold liquid passage for maintaining the supply of the second liquid material at a second predetermined temperature (col 2, lines 44-47); the first and second outlets respectively tangentially meet at an external surface of the die tip (Fig 5); a transfer block including first and second liquid inputs and portions of the first and second liquid passages (Fig 1); a die tip block (Fig 1, #42) including first and second outlets and other portions of the first and second liquid passages (Fig 3); and air passages (Fig 1, #39 and 40) positioned on opposite sides of the first and second liquid outlets and configured to direct process air to impinge the filaments.

cross-sectional configuration combining the first and second types of liquid material" is a process limitation.

11. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Evans et al (3,671,379).

Evans et al teach an apparatus for extruding having a die tip (Fig 3, #4) including a first liquid input configured to communicate with a supply of the first type of liquid material and a second liquid input configured to communicate with a supply of the second type of liquid material (Fig 3, #5 and #6); a plurality of first liquid outlets each for extruding a corresponding plurality of first strands (Fig 2); a plurality of second liquid outlets each for extruding a corresponding plurality of second strands, each second outlet positioned adjacent to a corresponding one of the first liquid outlets (Fig 2); a plurality of first liquid passages, each communicating between said first liquid input and a selected one of the first liquid outlets (Fig 2); a plurality of second liquid passages, each communicating between the second liquid input and a selected one of the second liquid outlets (Fig 2), the first and second liquid passages respectively converging at the first and second liquid outlets for respectively extruding the pluralities of first and second strands (Fig 2), the first and second strands combining together immediately after extrusion to form the plurality of multi-component filaments having a cross-sectional configuration combining the first and second types of liquid material (Figs 4-6); and the first and second outlets respectively tangentially meet at an external surface of the die

12. Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Privott, Jr et al (3,387,327).

Privott, Jr et al teach an apparatus for extruding having a die tip (Fig 1, #s 11 and 15) including a first liquid input configured to communicate with a supply of the first type of liquid material and a second liquid input configured to communicate with a supply of the second type of liquid material (Fig 1, #13 and near #5); a plurality of first liquid outlets each for extruding a corresponding plurality of first strands (Fig 1, #16); a plurality of second liquid outlets each for extruding a corresponding plurality of second strands, each second outlet positioned adjacent to a corresponding one of the first liquid outlets (Fig 1, #16); a plurality of first liquid passages, each communicating between said first liquid input and a selected one of the first liquid outlets (Fig 1); a plurality of second liquid passages, each communicating between the second liquid input and a selected one of the second liquid outlets (Fig 1), the first and second liquid passages respectively converging at the first and second liquid outlets for respectively extruding the pluralities of first and second strands (Fig 1), the first and second strands combining together immediately after extrusion to form the plurality of multi-component filaments having a cross-sectional configuration combining the first and second types of liquid material (Fig 1); the first and second outlets respectively tangentially meet at an external surface of the die tip (Fig 1); a transfer block including first and second liquid inputs and portions of the first and second liquid passages (Fig 1, #11); and a die tip block (Fig 1,

References of Interest

13. Groten (FR2790487), Lecron et al (4,437,869), Bach et al (4,740,339), Bromley et al (5,093,061) and Bansal et al (US 2002/0034909 A1) are cited of interest to show the state of the art.


Groten teaches that it is well known for strands to combine together immediately after extrusion.


Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph S. Del Sole whose telephone number is (703) 308-6295. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wanda Walker, can be reached at (703) 308-0457. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


J.S.D.
August 21, 2003


ROBERT DAVIS
PRIMARY EXAMINER
GROUP 1800 / 72

8/22/03